

F

THE HONORABLE WILLIAM L. DWYER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CMB INDUSTRIES, INC., a Michigan corporation,)

Plaintiff,)

v.)

WATTS INDUSTRIES, INC., a Delaware
corporation, and PACIFIC WATER WORKS
SUPPLY CO., INC., a Washington corporation,)

Defendants.)

NO. C96-1978 WD

JURY DEMAND

THIRD AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

Plaintiff CMB Industries, Inc. ("CMB") hereby complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, specifically 35 U.S.C. § 271 and 281.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1338(a).

3. Venue is proper in this judicial district under § 1391(b) and 1400(b).

II. JURY DEMAND

4. Plaintiff demands a trial by jury of all issues triable to a jury.

III. THE PARTIES

5. Plaintiff CMB Industries is a Michigan corporation with its principal place of business in Fresno, California.

6. On information and belief defendant Watts Industries, Inc. ("Watts") is a Delaware corporation with its principal place of business in North Andover, Massachusetts. Watts does business in this judicial district and has committed the acts complained of in this judicial district.

7. Defendant Pacific Water Works Supply Co., Inc., ("Pacific") is a Washington corporation with its principal place of business in Seattle, Washington. Pacific has committed the acts complained of in this judicial district.

8. CMB is the owner by assignment of U.S. Patent Nos. 5,503,176, 5,385,166, and 5,226,441 issued on April 2, 1996, January 31, 1995 and July 13, 1993 respectively. These patents describe and claim the invention of Charles W. Dunmire, et al. entitled Backflow Preventer with Adjustable Outflow Direction. CMB is also the owner by assignment of U.S. Patent No. 4,991,622 issued February 12, 1991. This patent describes and claims the invention of John L. Brewer, et al. entitled Multiply Configurable Backflow Preventer. True and correct copies of the '166, '176, '441 and '622 patents are attached hereto. CMB has developed, manufactures and sells backflow prevention devices which are covered by one or more of the claims of the above patents.

IV. PATENT INFRINGEMENT

9. Plaintiff repeats the allegations of paragraph 1 through 8.

10. Defendant Watts has been and continues to infringe the '176, '166, '441 and '622 patents ("the patents at issue") by making, using, selling and offering for sale without authorization backflow prevention devices which embody one or more claims of those patents. CMB is further informed and believes that Watts will continue to make and sell such infringing devices unless restrained by this Court.

11. Defendant Pacific has infringed the patents at issue by offering for sale a Watts backflow prevention device or devices without authorization which incorporate all of the elements of one or more of the claims of the patents at issue.

12. Watts and Pacific have derived and will continue to derive and receive from the above alleged acts of infringement, profits and revenues in an amount which is not presently known to CMB. Further, such acts of infringement were made with knowledge of at least the '622 and '441 patents and were thus committed intentionally and willfully. By reason of the above acts of infringement, CMB has been and will continue to be damaged in an amount to be determined at trial.


V. DEMAND FOR RELIEF

WHEREFORE CMB prays for relief as follows:

- A. That defendants be adjudged to have infringed the '176, '166, '441 and '622 patents;
- B. That defendants and their officers, agents, servants, employees, attorneys and all other persons acting in concert, participation or privity with them who receive actual notice of the order by a personal service or otherwise and Watts' successors and assigns be permanently restrained and enjoined from directly or indirectly infringing the '176, '166, '441 and '622 patents.
- C. For an accounting and an award of damages by reason of defendants' infringement of the '176, '166, '441 and '622 patents.
- D. For an award of prejudgment and postjudgment interest, exemplary damages and costs against defendants in accordance with 35 U.S.C. § 284; and
- E. That CMB be awarded such other further relief as this Court may deem just.

DATED this 20th day of February, 1998.

BOGLE & GATES P.L.L.C.


Robert E. Bonde, WSBA #12809
Mark S. Carlson, WSBA #17493
Attorneys for CMB Industries

THE HONORABLE WILLIAM L. DWYER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CMB INDUSTRIES, INC., a Michigan corporation,)

Plaintiff,)

v.)

WATTS INDUSTRIES, INC., a Delaware
corporation, and PACIFIC WATER WORKS
SUPPLY COMPANY, INC., a Washington
corporation,)

Defendants.)

NO. C96-1978 WLD

CERTIFICATE OF SERVICE

I am a citizen of the United States and am over 18 years of age and not a party to this action. My business address is Two Union Square, 601 Union Street, Seattle, Washington.


On February 20, 1998 I caused to be served a true and correct copy of Third Amended Complaint for Patent Infringement on the following:

Alan S. Middleton
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Attorneys for Watts Industries, Inc.
and Pacific Water Works Supply Co., Inc.
via facsimile and first class mail

BOGLE & GATES P.L.L.C.
A Professional Limited Liability Company
Two Union Square
601 Union Street
Seattle, Washington 98101-2346
(206) 682-5151

1 John A. Harre
2 Heidi E. Harvey
3 Fish & Richardson P.C.
4 225 Franklin Street
5 Boston, MA 02110-2804
6 Attorneys for Watts Industries, Inc.
7 and Pacific Water Works Supply Co., Inc.
8 via facsimile and first class mail

9 DATED this 20th day of February 1998.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Moneca Olson

800LE & 00770 A.C.
CMB

THE HONORABLE WILLIAM L. DWYER

1993 MAR 11 P 12:02

RECEIVED CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CMB INDUSTRIES, INC.,
a Michigan corporation,

Plaintiff,

v.

WATTS INDUSTRIES, INC.
a Delaware corporation, and
PACIFIC WATER WORKS SUPPLY
CO., INC., a Washington
corporation,

Defendants.

No. C96-1978 WD

ANSWER OF DEFENDANTS' WATTS
INDUSTRIES, INC. AND PACIFIC
WATER WORKS SUPPLY CO.
TO THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

ANSWER

Defendants, Watts Industries, Inc. ("Watts") and Pacific
Water Works Supply Co., Inc. ("Pacific"), hereby answer the
correspondingly numbered paragraphs of the Third Amended Complaint
for Patent Infringement of Plaintiff, CMB Industries, Inc.

("CMB"), as follows:

1. Admitted.

2. Admitted.

3. Watts denies that it actually resides within this
district, but admits that it may be deemed to reside within this

DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 1

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

RH 00001

1 district under 28 U.S.C. § 1391(c), and therefore that venue is
2 proper in this judicial district under 28 U.S.C. § 1391(b), but
3 denies that § 1400(b) is applicable. Admitted as to Pacific.

4 4. No response required.

5 5. Defendants are without information sufficient to form a
6 belief as to the allegations of Paragraph 5 of CMB's Third
7 Admitted Complaint and therefore deny the same.

8 6. Defendants admits that Watts is a Delaware corporation
9 with its principal place of business in North Andover,
10 Massachusetts and that it has done business in the state of
11 Washington. Otherwise, the remaining allegations of Paragraph 6
12 are denied.

13 7. Defendants admit that Pacific is a Washington
14 corporation with its principal place of business in Puyallup,
15 Pierce County, Washington. Otherwise, the remaining allegations
16 of Paragraph 7 are denied.

17 8. Defendants admit that U.S. Patent Nos. 5,503,176 ("the
18 '176 patent"), 5,385,166 ("the '166 patent"), 5,226,441 ("the '441
19 patent"), and 4,991,622 ("the 622 patent"), issued on April 2,
20 1996, January 31, 1995, July 13, 1993, and February 12, 1991,
21 respectively. Defendants also admit that copies of the '176, 166,
22 '441 and '662 patents were attached to the copy of the Complaint.
23 Defendants are without knowledge sufficient to form a belief as to
24 the truth of the allegations that CMB has developed, manufactures
25 and sells backflow prevention devices which are covered by one or
26 more claims of the above patents and therefore denies them.

27

RH 00002

28 DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 2

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

1 Except as expressly admitted, the remaining allegations of
2 Paragraph 8 are denied.

3 9. Watts incorporates by reference the above response to
4 Paragraphs 1-8.

5 10. Denied.

6 11. Denied.

7 12. Denied.

8 **AFFIRMATIVE DEFENSES**

9 1. Defendants do not infringe and have not infringed,
10 either directly or by inducing others to infringe, any valid claim
11 of U.S. Patent Nos. 5,503,176, 5,385,166, 5,226,441, and
12 4,991,622.

13 2. U.S. Patent Nos. 5,503,176, 5,385,166, and 5,226,441 are
14 invalid for failure to comply with the requirements of the patent
15 laws of United States, Title 35 U.S.C.

16 3. CMB's claim for relief is barred, in whole or in part,
17 by the equitable doctrine of estoppel.

18 4. U.S. Patent Nos. 5,503,176, 5,385,166, and 5,226,441 are
19 unenforceable due to inequitable conduct committed by plaintiff
20 CMB and/or its agents, representatives or attorneys who
21 participated in procuring said patents from the United States
22 Patent and Trademark Office ("PTO") in violation of the patent
23 laws of the United States, Title 35 U.S.C., and regulations
24 thereunder. More particularly, the above-identified patents are
25 unenforceable due to inequitable conduct at least due to the
26 conduct of CMB and/or its agents, representatives or attorneys who
27 participated in procuring said patents, including at least Charles

28 DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 3

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

RH 00003

1 W. Dunmire, Dennis G. Whitelaw, Richard D. Fields, Richard L.
2 Hughes, John L. Brewer, Thomas F. Coyne and Kevin W. Coyne, in
3 failing to advise the PTO of the existence of material prior art,
4 namely U.S. Patent No. 4,991,655 ("the McHugh patent"), of which,
5 on information and belief, at least Charles W. Dunmire, a listed
6 inventor on each of the above-identified patents, was aware prior
7 to the filing or during the prosecution of the above-identified
8 patents. This information would have been considered important by
9 a reasonable patent examiner in assessing the patentability of the
10 subject matter of U.S. Patent Nos. 5,503,176, 5,385,166, and
11 5,226,441 as it discloses backflow preventers having non-linear
12 inlet and outlet flow directions wherein the portions of the
13 backflow preventer are connected by bolted flanges allowing the
14 repositioning of the outlet flow direction with respect to the
15 inlet flow direction to any of a "plurality", i.e., a finite
16 number of discrete positions, as determined by the number and
17 arrangement of the bolts. The McHugh patent also teaches that the
18 bolted flanges can be replaced with conventional clamp and grooved
19 piping couplings which allow the repositioning of the outlet flow
20 direction with respect to the inlet flow direction to any of an
21 "infinite" number of positions This information was withheld in
22 violation of the requirements of 37 C.F.R. § 1.56 and, upon
23 information and belief, with an intent to deceive the PTO.

24 PRAYER FOR RELIEF

25 WHEREFORE, Watts prays that this Court enter judgment:

26 A. That plaintiff's complaint be dismissed with prejudice.
27

28 DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 4

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

1 B. That the '176, '166, '441, and '622 patents be found not
2 infringed by any actions of Defendants.

3 C. That the '176, '166, and '441 patents be found invalid,
4 void and unenforceable.

5 D. That plaintiff, its agents, and employees, and any other
6 acting in concert with it, be enjoined from asserting or
7 threatening to assert any alleged right arising from the '176,
8 '166, '441, or '622 patents against Watts, its agents, customers,
9 suppliers, vendees, or others acting on its behalf.

10 E. That this is an exceptional case and that plaintiff be
11 ordered to pay the costs incurred by Defendants in responding to
12 this action and Defendants' reasonable attorneys' fees pursuant to
13 35 U.S.C. § 285; and

14 F. That Defendants be granted such other and further relief
15 as this Court deems just and warranted under the circumstances.

16

17

18

19

20

21

22

23

24

25

26

27

28 DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 5

RH 00005

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

1 Respectfully submitted

2 WATTS INDUSTRIES, INC.

3 By its attorneys:

4
5 DAVIS WRIGHT TREMAINE LLP

6 Dated: March 11, 1998

By: *Alan S. Middleton* *ASm*
7 Alan S. Middleton
8 WSBA #18118
9 2600 Century Square
10 1501 Fourth Avenue
11 Seattle, Washington 98101-1688
12 Tel: (206) 622-3150
13 Fax: (206) 628-7699

14 Dated: March 10, 1998

By: *Heidi E. Harvey*
15 Heidi E. Harvey
16 John A. Harre
17 Fish & Richardson P.C.
18 225 Franklin Street
19 Boston, Massachusetts 02110-2804
20 Tel: (617) 542-5070
21 Fax: (617) 542-8906

22 290415.B11

23
24
25
26 RH 00006

27
28 DEFENDANTS' ANSWER TO THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT 6

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
(617) 542-5070

THE HONORABLE WILLIAM L. DWYER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CMB INDUSTRIES, INC., a Michigan corporation,

Plaintiff,

v.

WATTS INDUSTRIES, INC., a Delaware
corporation, and PACIFIC WATER WORKS
SUPPLY COMPANY, INC., a Washington
corporation,

Defendants.

NO. C96-1978 WLD

CERTIFICATE OF SERVICE

I am a citizen of the United States and am over 18 years of age and not a party to this
action. My business address is Two Union Square, 601 Union Street, Seattle, Washington.

On January 15, 1998 I caused to be served by facsimile and first class mail a true and
correct copy of (1) Motion for Leave to Amend and (2) (proposed) Order Granting Leave to Amend on
the following:

//

//


BOGLE & GATES P.L.L.C.
A Professional Limited Liability Company
Two Union Square
601 Union Street
Seattle, Washington 98101-2346
(206) 682-5151

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Alan S. Middleton
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Attorneys for Watts Industries, Inc.

Richard J. Padden
David W. Bever
Carney Badley Smith & Spellman
2200 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7091
Attorneys for Pacific Water Works Supply Co., Inc.

DATED this 15th day of January 1998.


Moneca Olson